

EDWARD H. KUBO, JR. # 2499  
United States Attorney  
District of Hawaii

MARSHALL SILVERBERG # 5111  
Assistant U.S. Attorney  
Room 6100, PJKK Federal Bldg.  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850  
Telephone: (808) 541-2850  
Email: [Marshall.Silverberg@usdoj.gov](mailto:Marshall.Silverberg@usdoj.gov)  
Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00161 HG
	)	
Plaintiff,	)	THE GOVERNMENT'S MEMORANDUM OF
	)	OPPOSITION TO THE DEFENDANT'S
vs.	)	MOTION FOR RECONSIDERATION OF
	)	THE DETENTION ORDER
JAY PADAYAO,	)	
	)	
Defendant.	)	
_____	)	

**THE GOVERNMENT'S MEMORANDUM OF OPPOSITION TO THE  
DEFENDANT'S MOTION FOR RECONSIDERATION OF THE DETENTION ORDER**

On January 11, 2006, the defendant Jay Padayao filed a motion for reconsideration of the Court's Order granting the government's motion to detain the defendant. The government opposes the motion for the following reasons.

First, on April 20, 2005, the defendant was charged in a one-count indictment with being a convicted felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). The indictment further charges that at the time the defendant committed this offense he had been previously convicted of at

least three prior violent felonies and was an armed career criminal within the meaning of 18 U.S.C. § 924(e). As such, the defendant is facing a mandatory minimum sentence of 15 years imprisonment.

Second, the defendant has a very long criminal record, including: four convictions in 1994 and 1995 for Escape 2; a 1994-95 conviction for Burglary 1 (for which he was sentenced to five years in prison); a 1994-95 conviction for Theft 1; a 1995 conviction for Assault 1 (for which he was sentenced to ten years in prison). In addition, his parole was revoked in 1997. Further, the defendant has admitted to having a serious marijuana problem and it appears he may use other drugs as well. All of these convictions show that the defendant is a danger to the community as well as a flight risk.

Third, while it is true that the defendant was debriefed on one occasion, the government has not committed to making any downward departure motion. Thus, as things now stand, the defendant continues to face the mandatory minimum sentence of 15 years.

Fourth, this case has been pending since June 2005. The defendant has had ample opportunity to review the discovery and make a decision as to whether he wants to plead guilty or go to trial. The fact that he apparently has not yet made that decision concerns the government that maybe he is trying to be

released so that he can flee. After all, as noted above, the defendant has been convicted of escape on four occasions.

Finally, while the defendant may in fact have made arrangements for training and a job opportunity as indicated in Mr. Kawana's declaration, as things stand now the trial is about seven weeks away and, as noted above, the defendant is facing a mandatory minimum sentence of 15 years in prison.

For all of these reasons, especially the defendant's four convictions for escape, we respectfully oppose the defendant's motion.

Dated: January 18, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

By /s/ Marshall H. Silverberg  
MARSHALL H. SILVERBERG  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by First Class Mail:

RICHARD S. KAWANA, ESQ.  
810 Richards Street  
Suite 851  
Honolulu, Hawaii 96813

Attorney for Defendant  
Jay Padayao

DATED: January 19, 2006, at Honolulu, Hawaii.

/s/ Cheri Abing